

ARIZONA CORPORATION COMMISSION
UTILITIES DIVISION STAFF'S
NOTICE OF INQUIRY

REGARDING THE FORM OF ORGANIZATION OF PUBLIC SERVICE CORPORATIONS
December 3, 2004

INTRODUCTION: An increasing number of public service corporations have organized as limited liability partnerships ("LLPs") and limited liability companies ("LLCs") over the past decade. This notice stems from the Commission's concerns regarding the optimal business structure of public service corporations in Arizona and the most effective way to regulate them.

PURPOSE: The purpose of this Notice of Inquiry ("NOI") is to solicit comments and suggestions useful to the Commission in its regulation of public service corporations. In an effort to effectively carry out its constitutional obligations, promote reliable utility service at reasonable rates, and to be cognizant of the financial health of the public service corporations, the Commission seeks comments from interested parties. Comments are requested regarding the most appropriate form(s) of organization of public service corporations including, but not limited to, the content of the Certificate of Convenience and Necessity ("CC&N") application process and the extension of a CC&N application process. Common forms of organization for public service corporations include sole proprietorships, partnerships, LLPs, S corporations, C corporations, cooperatives, not-for-profit corporations, and LLCs.

REQUEST: The Staff of the Commission requests answers to the following questions and requests responses either by e-mail to ljaress@cc.state.az.us or by mail to Linda Jaress, Executive Consultant III, Utilities Division, Arizona Corporation Commission, 1200 West Washington, Phoenix, Arizona 85007. Responses should be received on or before December 29, 2004. If you have further questions, please contact Linda Jaress at 602-542-0859.

QUESTIONS: (Please state the rationale which supports your response.)

General Questions Regarding Form of Organization

1. Should the Commission's rules and procedures for issuing CC&Ns and processing extensions of CC&Ns be modified to provide specific standards based on the Applicant's form of organization? Forms of organization to be considered include sole proprietorships, partnerships, LLPs, S corporations, C corporations, cooperatives, not-for-profit corporations, and LLCs.
2. Which forms of organization, if any, result in higher or lower ultimate costs to the consumer over the long term? Please explain.
3. Which forms of organization, if any, facilitate the transparency of management and ownership and why?

4. Which forms of organization, if any, hinder the transparency of management and ownership and why?
5. Which forms of organization, if any, result in better service to customers and why?
6. Which forms of organization, if any, result in lower rates to customers and why?
7. Is there a form of public service corporation ownership that better enables day-to-day business transactions than others? If so, how?
8. Is there a form of organization that facilitates mergers, acquisitions, or sales of assets? If so, how?
9. Is there a form of organization that facilitates mergers, acquisitions, or sales of assets without Commission approval? If so, how?
10. Should the Commission institute specific monitoring and reporting requirements based upon the form of organization under which a public service corporation operates?
11. Can the type of ownership form affect the ability to effectuate assets sales or mergers? If so, what possible customer harms or benefits result?
12. Does the form of ownership affect the possibility that an unfit or inappropriate owner may gain control of a public service corporation without authorization of the ACC? If so, how? If not, why not?
13. How might the ACC mitigate against the possibility of an unfit or inappropriate owner gaining control of a public service corporation?
14. Would transparency of utility ownership facilitate the disclosure of unfit or inappropriate utility ownership?
15. Would the public interest be better served through the disclosure and transparency of utility ownership? If so, why? If not, why not?

Limited Liability Partnerships and Limited Liability Companies

16. When a Class A public service corporation formed as an LLP or LLC adds or deletes a partner, manager or member, or changes their proportionate ownership, should an application be filed under the Commission's Public Utility Holding Companies and Affiliated Interests rules?

17. Do the financing statutes apply to LLPs and/or LLCs? If not, why not?
18. Should an LLP or LLC be denied a CC&N based solely upon its corporate structure?
Please explain your response.
19. Because the owners are shielded from the creditors of an LLP or LLC, should the Commission adopt a range of acceptable capital structures so consumers are not unfairly exposed to the possible financial failure of the LLP or LLC?
20. Describe any inherent income tax benefits or detriments associated with LLPs or LLCs that should be considered by the Commission.

Applications for CC&Ns and Extensions of CC&Ns

21. Should transparency of management and ownership be considered by the Commission in its determination of whether a CC&N should be granted to a public service corporation? Why or why not?
22. Would requiring public service entities formed as LLPs and LLCs to file with the Commission on an annual basis, information similar to that required in A.A.C. R14-2-805 enable the Commission to better regulate those entities?
23. In applications to the Commission for a CC&N or an extension of a CC&N, should the Commission be informed of and consider the following:
 - a. The names of the persons or entities that hold ownership interest (referred herein as "owners") and the portion of ownership held by each?
 - b. The amount of management control held by the owners?
 - c. The qualifications and experience of the owners and / or persons responsible for the management and operations of the public service corporation (referred herein as "managers")?
 - d. Whether any owner or manager has been convicted of any felony?
 - e. Whether any owner or manager has been convicted of a felony involving a transaction in public utility interests, consumer fraud or antitrust violations in any state or federal jurisdiction within the ten year period preceding the filing of the application?
 - f. Whether any of the owners or managers have been convicted of a felony, the essential elements of which consisted of fraud, misrepresentation, theft by false pretenses or restraint of trade or monopoly in any state or federal jurisdiction within the ten year period preceding the filing of the application?
 - g. Whether any of the owners or managers are subject to an injunction, judgment, decree, or permanent order of any local, state or federal court entered within the

ten year period preceding the filing of the application where such an action involved violation of: (1) public service corporations laws or rules of any jurisdiction; (2) the consumer fraud laws of any jurisdiction; or (3) the antitrust or restraint of trade laws of any jurisdiction.

- h. Whether any of the owners or managers has individually filed a petition for bankruptcy within the ten year period preceding the filing of the application?
- i. Whether any of the owners or managers have been involved with any corporation which has been placed in bankruptcy, receivership, or had its charter revoked, or administratively or judicially dissolved by any state or jurisdiction?
- j. Whether any of the owners or managers have been involved in any formal or informal complaint proceedings, litigation, review, inquiry, or investigation by or before any local, state, or federal regulatory commission, administrative agency, or law enforcement agency within the ten year period preceding the filing of the application?
- k. Whether any of the owners or managers have been involved in or the subject of (to the person or entity's knowledge) any civil or criminal investigation; civil, administrative or regulatory judgments, within the ten year period preceding the filing of the application?
- l. Whether the applicant should list all affiliated entities and entities under common ownership with the public service corporation?
- m. Whether the applicant should inform the Commission of the reasons why it has chosen the form of ownership under which it wishes to operate?

Additional Information, Explanation and Comments

24. Provide any additional information, explanation, or comments regarding the CC&N process and forms of ownership.